

Date of Decision : 27th November, 1995

Hon'ble MR.JUSTICE C.K.THAKKER

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Appearance:

MR BM MANGUKIYA for Petitioner

MR DA BAMBHANIA for Respondent No. 1

MR VIJAY H PATEL for Respondent No. 2, 3, 4

Coram : MR.JUSTICE C.K.THAKKER

ORAL JUDGEMENT :-

Rule. Mr.D.A. Bambhania, learned Additional Government Pleader, appears and waives service of rule on behalf of respondent No.1 and Mr.V.H. Patel appears and waives service of rule on behalf of respondents Nos. 2 to 4. In the facts and circumstances of the case, the matter is taken up for final hearing today.

This petition is filed against an order of suspension passed against the petitioner on June 23/26, 1995 by the District Primary Education Officer, respondent No.3 herein, by which the petitioner was placed under suspension. It was the case of the respondents that against the petitioner a case is registered at Garudeshwar Police Station, being C.R. II 21 of 1995 for offences punishable under Sections 323 and 504 IPC, read with Section 133 of the Bombay Police Act and also under Section 3(11) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("The Act", for short). The case of the respondents

appears to be that a complaint was filed by one Ashwinbhai Bhanabhai Tadvī of Kevadia, inter alia, alleging against the petitioner that on April 28, 1995 morning, he had gone to school at village Gadod. At about 9.45 A.M., when he was in the school, the petitioner, who is the Headmaster of the school, went there and without uttering a single sentence, he had given stick blows on the left hand, left leg and on back. On right leg also, he was injured. It is also stated that prior to 2 to 3 days of the incident, there was some altercation between the complainant and the petitioner and the complainant had given two slaps to the petitioner. He had, therefore, filed a complaint, requesting the Authorities to take appropriate proceedings in accordance with law. It appears that in pursuance of the said complaint, the petitioner came to be arrested and was kept in custody as an undertrial prisoner for 57 hours and 10 minutes. In these circumstances, since the petitioner had remained in custody for more than 48 hours, he was ordered to be suspended by the impugned order.

A number of contentions have been raised by the learned counsel for the petitioner. It was contended that the petitioner has not committed any offence whatsoever. It was submitted by the learned counsel that a false case is filed against the petitioner and the petitioner was constrained to approach this Court by filing an application, invoking the provisions of Section 482 of the Code of Criminal Procedure, which has been admitted and interim stay is also granted against further proceedings in criminal case. Mr. Mangukia contended that even if it is assumed that deemed suspension has taken place in view of the petitioner remaining in custody for more than 48 hours, in the facts and circumstances of the case, no reasonable man could have taken such action and it is required to be interfered with. It was also argued that there is total non-application of mind on the part of the respondent-Authorities in invoking the provisions of Section 3(1)(xi) of the Act. Mr. Bambhanīa and Mr. Patel, on the other hand, supported the order. They have submitted that the petitioner, who is a Headmaster, has taken law in his own hand and has beaten the complainant, who was an Assistant Teacher, without there being any fault on his part. It was also contended that when deemed provision has taken effect, the Court may not interfere with that matter.

In the facts and circumstances of the case, in my opinion, the petition requires to be allowed. Prima facie, in my opinion, the contention of the respondents

appears to be well-founded that since the petitioner had remained in custody for more than 48 hours in custody, he was rightly deemed to be treated as on suspension. But, on merits, in my view, Mr. Mangukia is right in submitting that the incident appears to be of a private nature. Looking to the complaint itself, it is clear that before two days prior to the incident, there was some altercation between the complainant and the petitioner. According to the complainant himself, he had given two slaps to the petitioner. In these circumstances, in my opinion, it cannot be said that the action was such which may result in dismissal, removal or major penalty against the petitioner. Moreover, the contention also appears to be well-founded that there is non-application of mind on the part of the respondent-Authorities, in invoking the provisions of Section 3(1)(xi) of the Act. Section prescribes punishments for various offences of atrocities. Clause (xi) thereof reads as under :-

"...3. Punishments for offences of atrocities.-(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

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(xi) assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty;"

It is rightly submitted that the case may fall within the mischief of clause (xi) only if assault or force is used to any woman belonging to Scheduled Caste or Scheduled Tribe, with intent to dishonour or outrage her modesty. In the instant case, the complainant is not a woman. Hence, that provision could not have been pressed in service. For all these reasons, in my opinion, the petition requires to be allowed and is accordingly allowed. Rule is made absolute. The impugned order of suspension will not take place and the petitioner will be allowed to discharge his duties in accordance with law. It is, however, clarified that if any proceedings are initiated against the petitioner, either by way of departmental enquiry or in any other manner, the proceedings will not be stayed and an appropriate order can be passed in accordance with law against him. All these observations made by me hereinabove must be considered and treated only for the disposal of this petition and if any proceedings are initiated against the petitioner, the appropriate Authority will decide the same in accordance with law. I may also clarify that I am not expressing any opinion on merits since a complaint

is also pending against the petitioner.

Direct service is permitted.

(apj)